



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,327	09/30/2003	Daisuke Kitazawa	243327US8	2260
22850	7590	05/08/2007		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER SAFAIPOUR, BOBBAK	
			ART UNIT 2618	PAPER NUMBER
			NOTIFICATION DATE 05/08/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/673,327	Applicant(s) KITAZAWA ET AL.	
	Examiner Bobbak Safaipoor	Art Unit 2618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) ~~fourteen~~ (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

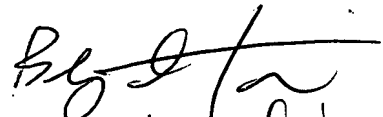
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

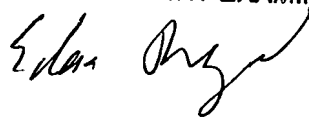
REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The argued features read upon the cited references, as previously discussed. In independent claims 1 and 3, Applicant essentially argues that Hall fails to teach or suggest "determining that a communication to be transmitted from the base station to the mobile station is either real-time or non-real time traffic based on at least one of a transmission delay, maximum retransmission count and reception error rate corresponding to the communication." The Examiner respectfully disagrees. On col. 3, lines 15 -35, Hall discloses that the power margin requirements may be different for voice (or other real time data) communication modes because there is usually not time available to retransmit erroneous voice data, while time is usually available to retransmit erroneous data packets (read as based on at least one of a transmission delay). Furthermore, Hall discloses reception error rate on col. 4, lines 10 -30. Furthermore, as indicated in the Final Office Action, Moshes (EP 1050977 A2) discloses that the number of ACKS lost/number of ACKs expected is greater than a first threshold, the wireless unit increases the transmit power level (read as based on maximum retransmission count). The recited claim language is given the broadest reasonable interpretation. Applicant also argues that Naghian fails to teach or suggest "setting a transmission power margin to a first value if the communication is real-time traffic and a second value if the communication is non real time traffic, wherein the first value is greater than the second value." The Examiner respectfully disagrees. Naghian discloses that a power margin having an upper limit value and a lower limit value can be determined. In addition each service, like speech, data and image, have specific optimum transmission power levels which the mobile station approaches from above or below. (fig. 2, col. 4, line 29 to fig. 5, line 20). For independent claims 2,5, and 9, Applicant essentially argues that Hall and Denkert fail to teach or suggest setting a transmission power margin so that the transmission power margin increases as the data retransmission count in an uplink or downlink increases. The Examiner respectfully disagrees. Denkert discloses that a downlink transmit power for a packet can be increased (read as transmission power margin increases) to reduce the remaining delay. Because the recited claim language is given the broadest reasonable interpretation, It is obvious to one of ordinary skill in the art if the power margin is increases, then the retransmission must also increase (col. 3, lines 10-35, col. 4, line 59 to col. 5, line 40). Furthermore, Moshes (EP 1050977 A2), as indicated in the Final Office Action, discloses that the number of acknowledgments expected by the wireless unit can be based on the number of radio packets transmitted by the wireless unit. If the number of ACKs lost/number of ACKs expected is greater than a first threshold, the wireless unit increases the transmit power.


Bobbak Safaipoor
4/27/07

EDAN ORGAD
PRIMARY PATENT EXAMINER

 4/27/07